



GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-60

[GSPMR Case 2016-105-1; Docket No. 2016-0004, Sequence No. 1]

RIN 3090-AJ74

Public Availability of Agency Records and Informational Materials

AGENCIES: Office of Administrative Services (OAS), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is issuing a proposed rule to amend its regulations implementing the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline the language of several procedural provisions and to incorporate certain changes brought about by the amendments to the FOIA under both statutory and nonstatutory authorities. This rule also amends the GSA's regulations under the Freedom of Information Act (FOIA) to incorporate certain changes made to the FOIA by the FOIA Improvement Act of 2016. Additionally, the regulations are being updated to reflect developments in case law, executive guidance from the Department of Justice - Office of Information Policy, technological advancements in how the

FOIA is administered, and to include current cost figures to be used in calculating and charging fees. Finally, the revisions increase the amount of information that members of the public may receive from the Agency without being charged processing fees through proactive disclosures.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after the date of publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSPMR case 2016-105-1 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.
Submit comments via the Federal eRulemaking portal by searching for "GSPMR Case 2016-105-1". Select the link "Comment Now" that corresponds with "GPSMR Case 2016-105-1." Follow the instructions provided on the screen. Please include your name, company name (if any), and "GSPMR Case 2016-105-1" on your attached document.
- Mail: General Services Administration,
Regulatory Secretariat Division (MVCB), ATTN:

Ms. Lois Mandell, 1800 F Street, NW., 2nd Floor,
Washington, DC 20405.

Instructions: Please submit comments only and cite GSPMR Case 2016-105-1, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Travis S. Lewis, Director of GSA, OAS, Freedom of Information Act and Records Management Division, at 202-219-3078 via email at travis.lewis@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite GSPMR Case 2016-105-1.

SUPPLEMENTARY INFORMATION:

I. Background

The FOIA provides that any person has a right, enforceable in federal court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by

one of nine exemptions or by one of three special law enforcement record exclusions. The FOIA thus established a statutory right of public access to Executive Branch information in the Federal Government. 41 CFR part 105-60 establishes the policies, responsibilities and procedures for the release of GSA records, which are under the jurisdiction of GSA, to members of the public. These regulations apply to information found in all GSA organizations, portfolios, business lines, regional offices, and components. This rule proposes revisions to GSA's regulations under the FOIA to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the FOIA Improvement Act of 2016, the OPEN FOIA Act of 2009, the OPEN Government Act of 2007, and the Electronic Freedom of Information Act Amendments of 1996. With respect to the FOIA Improvement Act of 2016, Public Law 114-185, 130 Stat. 538 (June 30, 2016). The FOIA Improvement Act of 2016 provides that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. Finally, the Act codifies the "foreseeable harm"

standard. This proposed rule updates the GSA's regulations in 41 CFR Part 105-60 to reflect those statutory changes. Additionally, the regulations are being updated to reflect developments in case law, technological changes in the administration of the FOIA, executive guidance from the Department of Justice, other nonstatutory authorities such as Presidential Executive Orders, and to include current cost figures to be used in calculating and charging fees. The proposed revisions incorporate changes to the language and structure of the current GSA regulations enumerated in 41 CFR part 105-60 to achieve the aforementioned updates. Please note that proposed revisions to GSA's FOIA Fee Schedule can be found in Subpart J-Fees. The revisions also increase the amount of information that members of the public may receive from the Agency without being charged processing fees through proactive disclosures of agency records online in the GSA FOIA Reading Room. All substantive changes to GSA's FOIA regulations in this proposed rule will be effective upon final publication of this rule in the Federal Register.

II. Executive Orders 12866 and 13563—Regulatory Review

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

III. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

IV. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule is also exempt from Administrative Procedure Act per 5 U.S.C. 553(a)(2), because it applies to agency management or personnel.

V. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

VI. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

VII. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 41 CFR Part 105-60

Administrative practice and procedure, Records, Information, Confidential business information, Freedom of Information Act, Privacy Act.

Dated: June 12, 2018.

Robert Stafford,
Chief Administrative Services Officer,
General Services Administration.

For the reasons stated in the preamble, GSA proposes to revise 41 CFR part 105-60 to read as follows:

PART 105-60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.

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105-60.1100 Definitions.

Authority: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

Subpart A—General Policy

§ 105-60.000 Scope of part.

This part of the Code of Federal Regulations contains the rules that the United States General Services Administration, hereinafter GSA, follows in processing requests for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget ("OMB Guidelines"). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with Privacy Act regulations as well as under this part.

§ 105.60.001 General policy.

(a) In compliance with the Freedom of Information Act (FOIA), as amended 5 U.S.C. 552, a positive and continuing obligation exists for the GSA to make available to the fullest extent practicable upon request by members of the public, all records and informational materials that are generated, maintained, and controlled by GSA.

(b) This subpart also covers exemptions from disclosure of these records; procedures for the public to inspect or obtain copies of GSA records.

(c) The regulations promulgated in this subpart are consistent with amendments to 5 U.S.C. 552a as well as

other applicable Federal laws germane to disclosure of information to the public.

(d) This subpart applies to all GSA organizations, portfolios, business lines, regional offices and components. The aforementioned units may establish additional rules due to unique program requirements; however, such rules must be consistent with these rules and have the concurrence of the GSA Administrator and GSA Chief FOIA Officer.

(e) Any internal GSA policies or procedures inconsistent with the policies and procedures promulgated in this subpart are superseded by this subpart to the extent of that inconsistency.

(f) This subpart does not entitle any person to any service or to the disclosure of any GSA records that are not required to be disclosed under the FOIA.

Subpart B-Proactive Disclosures

§ 105-60.100 Public availability of information.

Records that the FOIA requires GSA to make available for public inspection in an electronic format can be accessed through the GSA FOIA Reading Room, and the FOIA Online System. The GSA is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public

that are appropriate for public disclosure, and for posting and indexing such records. GSA shall ensure that its online FOIA Library of posted records and indices is reviewed and updated on an ongoing basis. GSA has a FOIA Requester Service Center and FOIA Public Liaison who can assist individuals in locating records particular to an agency. A list of agency FOIA Public Liaisons is available at: <http://www.foia.gov/report-makerequest.html>.

Subpart C—Requirements for Making Requests

§ 105-60.200 Making a request.

(a) To make a request for GSA records, a requester should file their request directly to the GSA FOIA Requester Service Center, the office that oversees FOIA requests for all of GSA. A request shall receive the quickest possible response if it is filed online via the FOIAonline website:

(<https://foiaonline.regulations.gov/foia/action/public/home>). From FOIAonline you can submit FOIA requests to GSA and other participating FOIAonline agencies, track the status of requests, search for requests submitted by others, access previously released records, and generate agency-specific FOIA processing reports.

(b) If it is not possible for a requester to submit an electronic request via FOIAonline, there are several

alternatives to submit FOIA requests to GSA: Standard Mail: GSA FOIA Requester Service Center (H1F), Room 7308, 1800 F. Street, NW, Washington, DC 20405. Fax: 202-501-2727. Email: gsa.foia@gsa.gov (Subject: Request via Email).

(c) Additional requirements for submitting a request to GSA include:

(1) The requester must provide the following items of contact information:

(i) Full name with surname (Mr., Ms., Mrs., Dr., etc.);

(ii) Complete mailing address;

(iii) Telephone number.

(2) Although it is not a mandatory requirement, GSA also recommends the requester provide a personal/business email address.

(3) Requesters must provide their contact information to assist the agency in communicating with them and providing released records. These requirements apply to both electronic FOIA requests as well as those filed via standard mail.

(d) A perfected FOIA request is a FOIA request for records which adequately describes the records sought, is made in accordance with GSA's regulations, has been

received by the GSA FOIA Requester Service center, and for which there is no remaining question about the payment or amount of applicable fees.

(e) Agency records are those created or received in the course of conducting agency business, including, but not limited to: paper, electronic or other physical forms for records. These may include reports, letters, photographs, audio recordings and emails. A record must exist and be in the possession and control of the GSA before it is considered for release.

(f) GSA is not required to:

(1) Answer questions or interrogatories posed as FOIA requests;

(2) Issue opinions;

(3) Analyze and/or interpret documents for a requester;

(4) Create records;

(5) Conduct research; or

(6) Initiate investigations;

(g) A requester who is making a request for records about himself or herself must comply with the verification of identity requirements as determined by the Agency.

(h) Where a request for records pertains to another individual, a requester may receive greater access by

submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, the GSA can require a requester to supply additional information such as a "Certification of Identity Form" in order to sufficiently verify the individual submitting the request and/or also verify that a particular individual has consented to disclosure.

§ 105-60.201 Description of records sought.

(a) Requesters must describe the records sought in sufficient detail to enable GSA personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include the following information in their FOIA request that may help the GSA identify the requested records the date/timeframe the requested information was created or occurred, title or name, author, recipient, subject matter of the record, case number, file designation, contract number, leasing identification number, or reference number and if known, the component of GSA housing the records.

(b) Before submitting their requests, requesters may contact the GSA FOIA Requester Service Center or GSA FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If after receiving a request, the GSA determines that it does not reasonably describe the records sought, GSA shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with their assigned Government Information Specialist or FOIA Public Liaison. If a request does not reasonably describe the records sought, the GSA's response to the request may be delayed.

(c) In order to efficiently respond to FOIA requests within the required twenty business day timeframe per 5 U.S.C. 552, GSA may close an unperfected request ten business days after the GSA notifies the requester of the information needed to perfect the request. If the request does not reasonably describe the records sought, it is unperfected.

(d) Requesters may specify their preferred form or format (including electronic formats) for the records they seek. GSA shall accommodate the request if the record is readily reproducible in that form or format.

Subpart D—Responding to Requests

§ 105-60.300 Responsibility for responding to requests.

(a) GSA is responsible for responding to all requests for records under the FOIA 5 U.S.C. 552. GSA is responsible for releasing records only when the requested records are generated, maintained and controlled by GSA. GSA will only release records after the appropriate exemptions, redactions, and other legal considerations have been applied per 5 U.S.C. 552 In determining which records are responsive to a request, the Agency shall include only the records in its possession as of the date that it begins its search. If any other date is used, GSA must inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(b) The GSA Administrator and GSA Chief FOIA Officer are authorized to grant or deny any requests for records that are generated, maintained and controlled by GSA.

(c) The GSA FOIA Requester Service Center is responsible for managing requests from the time the request is received until the time a response is provided to the requester.

(d) Upon receiving a request, the GSA FOIA Requester Service Center determines whether the information resides

within GSA. If GSA is not the owner of the information, then the GSA FOIA Requester Service Center will make a good faith effort to redirect the requester to the appropriate record location or entity that controls the record, if known.

(e) If GSA has the records, then the FOIA Requester Service Center shall work in coordination with the appropriate GSA component to fulfill the FOIA request in compliance with 5 U.S.C. 552a.

§ 105-60.301 Consultation, referral, and coordination.

(a) When GSA is reviewing records located in response to a FOIA request, GSA shall determine whether another agency of the federal government is better able to determine if the records are releasable under the FOIA. As to any such record, the GSA shall proceed in one of the following ways:

(1) Consultation. When the requested records originate with GSA, but contain within them information of interest to another agency or other Federal Government office, GSA should typically consult with that other entity prior to making a release determination.

(2) Referral. (i) When GSA believes that a different agency or component is best able to determine whether to disclose the record, GSA should refer the

responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that created the record is presumed to be the best agency to make the disclosure determination. However, if GSA and the originating agency jointly agree that GSA is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever GSA refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral- informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) Coordination. (i) This referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests.

(ii) For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law

enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if GSA locates a record that originates with an intelligence community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms.

(iii) In such instances, in order to avoid harm to an interest protected by an applicable exemption, GSA should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by GSA.

(4) Classified information. (i) On receipt of any request involving classified information, GSA must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records,

GSA must refer the responsibility for responding to the request regarding this information to the agency that classified the information or that should consider the information for classification.

(ii) Whenever GSA's records contain information that has been derivatively classified (meaning it contains information classified by another agency), GSA must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(b) All consultations and referrals received by GSA shall be handled according to the date the other agency received the perfected FOIA request.

(c) GSA may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 105-60.302 Time requirements to respond to FOIA requests.

(a) Once a perfected request is received, it can begin to be processed by the GSA FOIA Requester Service Center. Pursuant to the FOIA, GSA generally has twenty (20) business days to make a determination on the request, excluding Saturdays, Sundays, and federal holidays. This time period begins when the request is received by the GSA

FOIA Requester Service Center via U.S. Mail, email or facsimile.

(b) GSA shall respond to requests by order of receipt.

(c) GSA will inform the FOIA requester of GSA's decision and send the requester the responsive documents within a reasonable timeframe and or negotiated timeframe based on scope and level of effort to prepare the FOIA request response.

(d) GSA must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in § 105-60.304 Expedited Processing of this part. GSA may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors GSA may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. GSA shall advise requesters of the track into which their request falls upon request, and when appropriate, offer the requester an opportunity to narrow or modify their request to ensure it is fulfilled in a timely manner.

§ 105-60.303 Unusual circumstances.

(a) Whenever GSA cannot meet the statutory time limit for processing a request because of "unusual circumstances," as defined in 5 U.S.C. 552, and GSA extends the time limit on that basis, GSA must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which GSA estimates the processing of the request shall be completed. Where the extension exceeds ten (10) business days, GSA must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. GSA must make available its FOIA Public Liaison for this purpose. GSA must also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(b) To satisfy unusual circumstances under the FOIA, GSA may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. GSA cannot aggregate multiple requests that involve unrelated matters.

§ 105-60.304 Expedited processing.

(a) A request for expedited processing may be made at any time. In order to qualify for consideration for expedited processing, the request must reasonably describe the records sought. Expedited requests should be described in sufficient detail to facilitate expedited processing.

(b) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing as described in (c) (1)-(3). As a matter of administrative discretion, GSA may waive the formal certification requirement.

(c) GSA may process requests and appeals on an expedited basis whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information; or

(3) The loss of substantial due process rights; or

(4) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence

(d) GSA must notify the requester within ten (10) calendar days of its decision receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and processed as soon as practicable. If a request for expedited processing is denied, GSA shall act on any appeal of that decision within three business days.

Subpart E—Acknowledging the FOIA Request

§ 105-60.400 Acknowledgement procedures.

(a) GSA to the extent practicable, shall communicate with requesters electronically via the FOIAonline web portal and/or email.

(b) Upon receipt of a request, GSA shall send requesters an acknowledgement letter within two business days containing a brief description of the records sought so requesters may more easily keep track of their requests.

(c) When a request is submitted via FOIAonline, the system automatically generates a tracking number which

allows for easy identification of each request. This tracking number is included in the acknowledgement letter.

(d) When GSA receives a request not directly entered by the requester into FOIAonline (i.e., email, fax, standard mail, etc) the FOIA Requester Service Center shall immediately upload the request into the FOIAonline system and it shall be assigned a tracking number which shall be communicated to the requester.

(e) Upon request, GSA shall provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material or searches in multiple locations, GSA may provide an interim response, meaning the agency releases the records on a rolling basis as the records are located and verified.

§ 105-60.500 Applying FOIA exemptions.

(a) 5 U.S.C. 552(b)(1)-(9) of the Freedom of Information Act provides that the disclosure requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order (see Executive Order No. 13,526);

(2) Related solely to the internal personnel rules and practices of an agency; and

(3) Specifically exempted from disclosure by statute other than 5 U.S.C. 552(b) (1)-(9), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue;

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iii) Trade secrets and commercial or financial information which could harm the competitive posture or business interests of a company;

(iv) Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

(v) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(vi) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

(G) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(H) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after redacting the portions of the requested records that are exempt under this section.

Subpart G—Final Responses to the FOIA Request

§ 105-60.600 Final response procedures and rules.

(a) Once GSA determines that it shall grant a request in full or in part, the requester shall be notified of the decision in writing. GSA shall also inform the requester of any fees charged under § 105-60.904 Fee Schedule of this part and must disclose the requested records to the requester promptly upon payment of any applicable fees. The agency must inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(b) If GSA makes an adverse determination denying any part of the request, it shall notify the requester of that

determination in writing. Adverse determinations, or denials of requests, include decisions that:

(1) The requested record is exempt, in whole or in part;

(2) The request does not reasonably describe the records sought;

(3) The information requested is not a record subject to the FOIA;

(4) The requested record does not exist, cannot be located, or has been destroyed; or

(5) The requested record is not readily reproducible in the form or format sought by the requester.

(c) Records disclosed in part shall be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(d) Adverse determinations also include denials involving fees waiver requests, denials for expedited processing or closure of requests due to nonpayment.

(e) The denial, in full or in part, must be signed by the Chief FOIA Officer or designee and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the GSA in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under Subpart I—Appeals of this part, and a description of the appeal requirements.

(5) A statement notifying the requester of the assistance available from the agency's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(f) Use of record exclusions:

(1) In the event that GSA identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), GSA must confer with Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion.

(2) If GSA invokes an exclusion, it must maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

Subpart H—Handling Confidential Commercial Information

§ 105-60.700 Procedural and lawful considerations.

(a) Confidential commercial information means commercial or financial information obtained by the GSA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b) (4).

(b) Submitter means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(c) A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings/or redact any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) When notice to submitters is required. (1) GSA must promptly provide written notice to the submitter of confidential commercial information whenever records

containing such information are requested under the FOIA if GSA determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) GSA has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, GSA may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(e) The notice requirements of this section do not apply if:

(1) GSA determines that the information is exempt under the FOIA, and therefore shall not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12,600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such a case, GSA shall give the submitter written notice of any final decision to disclose the information within reasonable time prior to a specified disclosure date.

§ 105-60.701 Opportunity to object to disclosure.

(a) GSA shall provide a submitter with ten business days, within which the submitter must respond to the notice referenced above.

(b) If a submitter has any objections to disclosure, it should provide GSA a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as the basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(c) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information.

(d) GSA is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(e) GSA must consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) Whenever GSA decides to disclose information over the objection of a submitter, the agency must provide the submitter written notice, which must include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the agency intends to release them; and

(3) The specified disclosure date.

(g) Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, GSA must promptly notify the submitter.

(h) GSA must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and

whenever a submitter files a lawsuit to prevent the disclosure of the information.

Subpart I—Appeals

§ 105-60.800 Submitting an appeal.

(a) Before seeking review by a court of an adverse GSA FOIA request determination, a requester must first submit a timely administrative appeal per the rules of this subpart.

(b) A requester may appeal any adverse determinations to the GSA FOIA Requester Service Center which is designated as the agency's FOIA Appeals Office. Examples of adverse determinations are provided in §§ 105-60.600(b) and (d) of this part. Requesters can submit appeals in accordance with the following requirements:

(1) The requester must submit the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within ninety calendar days after the date of the response;

(2) The appeal must contain the basis for disagreement with the initial denial i.e., the appeal should clearly identify the agency determination that is being appealed;

(3) The appeal must include the associated FOIAonline tracking number; and

(4) To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

§ 105-60.801 Adjudication.

(a) The GSA Chief FOIA Officer or a designee shall act on behalf of the GSA on all appeals under this section.

(b) An appeal ordinarily shall not be adjudicated if the request becomes a matter of FOIA litigation.

(c) On receipt of any appeal involving classified information, the GSA must take appropriate action to ensure compliance with applicable classification rules.

(d) GSA must provide its decision on an appeal in writing. A decision that upholds GSA's original determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied.

(e) The decision must provide the requester with notification of the statutory right to file a lawsuit and shall inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If GSA's decision is remanded or modified on appeal, GSA shall notify the

requester of that determination in writing. GSA shall then further process the request in accordance with that appeal determination and shall respond directly to the requester.

(f) Engaging in dispute resolution services provided by OGIS. Mediation is a voluntary process. If GSA agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

§ 105-60.802 Requirements to Preserve FOIA Records

(a) GSA must preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code (U.S.C) or the General Records Schedule 14 of the National Archives and Records Administration (NARA). GSA must not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Subpart J—Fees

§ 105-60.900 General provisions.

(a) GSA shall charge for processing requests under the FOIA in accordance with the provisions of this section and with OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters:

- (1) Commercial use requesters;
- (2) Non-commercial scientific or educational institutions or news media requesters; and
- (3) All other requesters.

(b) Different fees are assessed depending on the category. Requesters may seek a fee waiver. GSA must consider requests for fee waiver in accordance with the requirements in § 105-60.907 Fee Waivers and Fee Reductions of this subpart. To resolve any fee issues that arise under this section, GSA may contact a requester for additional information. GSA must ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner.

(c) GSA shall collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check, credit card, or money order made payable to the United States General Services Administration, or by another method as determined by GSA.

§ 105-60.901 Definitions.

(a) Commercial use request is a request that asks for information for use or purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. GSA's decision to place a requester in the commercial use category shall be

made on a case-by-case basis and is based on the requester's intended use of the information. GSA shall notify requesters of their placement in this category.

(b) Direct costs are those expenses that GSA incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus sixteen (16) percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space or the heating or lighting of a facility.

(c) Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies here can take the form of paper, audiovisual materials, or electronic records.

(d) Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Agencies may seek verification from the

requester that the request is in furtherance of scholarly research. The examples below serve to further clarify:

(1) Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(2) Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(3) Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(e) Noncommercial scientific institution is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this

category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. GSA shall advise requesters of their placement in this category.

(f) Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however,

GSA can also consider a requester's past publication record in making this determination. GSA shall advise requesters of their placement in this category.

(g) Review is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes the process of reviewing each individual record for possible redactions and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 105-60.701-Opportunity to Object to Disclosure of this part. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(h) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

§ 105-60.902 Fees to be charged.

In responding to FOIA requests, GSA shall charge the following fees unless a waiver or reduction of fees has been granted under § 105-60.907 Fee Waivers and Fee Reductions of this subpart. Because the fee amounts provided below already account for the direct costs associated with a given fee type, GSA shall not add any additional costs to charges calculated under this section.

(a) Search fees. (1) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. GSA shall charge search fees for all other requesters, subject to the rules and restrictions enumerated in this subpart. GSA may properly charge for time spent searching even if the GSA FOIA Requester Service Center does not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(2) For each half hour (30 minutes) spent by GSA personnel searching for requested records, including electronic searches that do not require new programming, a \$24.50 fee shall be assessed per the guidelines of the fee schedule enumerated in § 105-60.904 Fee Schedule of this subpart.

(3) GSA shall charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. GSA must notify the requester of the costs associated with creating such a program, and the requester must agree to pay the associated costs before the costs may be incurred.

(4) For requests that require the retrieval of records stored by GSA at a Federal records center operated by the National Archives and Records Administration (NARA), GSA shall charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(b) Duplication fees. (1) GSA shall charge duplication fees to all requesters, subject to the restrictions of § 105-60.903 Restrictions on charging fees of this subpart. GSA must honor a requester's preference for receiving a record in a particular form or format where the agency can readily reproduce it in the form or format requested. Where photocopies are supplied, GSA shall provide one copy per request at the cost of \$0.10 per copy. For copies of records produced on tapes, disks, or other media, GSA shall charge the direct costs of producing the copy, including operator time.

(2) Where paper documents must be scanned in order to comply with a requester's preference to receive the

records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, GSA shall charge the direct costs.

(3) GSA determines the standard fee for duplication of records as follows:

(i) Per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment) - U.S. \$0.10.

(ii) Per copy prepared by any other method of duplication - actual direct cost of production.

(c) Review fees. GSA shall charge review fees to requesters who make commercial use requests. Review fees shall be assessed based upon the initial review of the record (i.e., the review conducted by GSA to determine whether an exemption applies to a particular record or portion of a record). No charge shall be made for review during the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with GSA or another agency's secondary review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees

shall be charged at the same rates as those enumerated in the fee schedule of this section.

§ 105-60.903 Restrictions on charging fees.

(a) When GSA determines that a requester is an educational institution, non-commercial scientific institution or representative of the news media, and the records are not sought for commercial use, GSA shall not charge search fees.

(b) If GSA fails to comply with the time limits in which to respond to a request for agency records under FOIA, it will not charge search fees, or in the instances of requests from requesters described in (a) of this section, may not charge duplication fees, except as described in paragraphs (b)(1) through (3) below. GSA will charge duplication fees in accordance with §§ 105-60.902 (b)(1) through (3) of this part.

(1) If GSA has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(2) If GSA has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, GSA

may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. GSA must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and GSA must have discussed with the requester via written mail, e-mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(3) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(c) No search or review fees shall be charged for a half hour period unless more than half of that period is required for search or review.

(d) Except for requesters seeking records for a commercial use, GSA must provide without charge:

(1) The first 100 pages of duplication (or the cost equivalent for other media); and

(2) The first two (2) hours of search time.

(e) No fee shall be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$49.00.

§ 105-60.904 Fee schedule.

Table 1-Fee Requester Category Table outlines the basic fee categories and applicable fees:

(a) Table 1-Fee Requester Category Table.

Requester category	Search fees	Review fees	Duplication fees	Amount
Commercial use requester.	Yes.	Yes.	Yes, first 100 pages, or equivalent volume without charge. Then, U.S. \$0.10. per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment) - OR, per copy prepared by any other method of duplication - actual direct cost of production.	\$49.00/hour plus applicable duplication costs
Educational and noncommercial scientific institutions.	No.	No.	Yes, first 100 pages, or equivalent volume without charge. Then, U.S. \$0.10. per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of	Eligible requesters not subject to fees other than duplication costs.

			personnel and equipment) - OR, per copy prepared by any other method of duplication - actual direct cost of production.	
Representative of news media.	No.	No.	Yes, first 100 pages, or equivalent volume without charge. Then, U.S. \$0.10. per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment) - OR, per copy prepared by any other method of duplication - actual direct cost of production.	Eligible requesters not subject to fees other than duplication costs.
All other requesters.	Yes (first two hours without charge).	No.	Yes, first 100 pages, or equivalent volume without charge. Then, U.S. \$0.10. per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment) - OR, per copy prepared by any other method of duplication - actual direct cost of production.	\$49.00/hour plus applicable duplication costs

Note 1: GSA's calculated hourly rate for manual search, computer operator/programmer time, and employee time spent reviewing records is

set at a flat rate of 49.00 per hour. GSA charges for these FOIA services by the hour at \$49.00 and half hour at \$24.50.

Note 2: The fee schedule of this section does not apply to fees charged under any statute that specifically requires GSA to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, GSA must inform the requester of the contact information for that program.

Note 3: If GSA utilizes a contractor or agency personnel outside of the FOIA Requester Service Center to perform any services described in this subpart, the standard fee is based on the equivalent hourly rates.

§ 105-60.905 Anticipated Fees.

(a) When GSA determines or estimates that the fees to be assessed in accordance with this section shall exceed \$49.00, the Agency shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated via writing. If only a portion of the fee can be estimated readily, GSA shall advise the requester accordingly. If the request is not for noncommercial use, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two (2) hours of search time at no

charge, and shall advise the requester whether those entitlements have been provided.

(b) If the GSA notifies the requester that the actual or estimated fees are in excess of \$49.00, the request shall not be considered received and further work shall not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay. Or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment/or designate an exact dollar amount in writing the requester is willing to pay. GSA is not required to accept payments in installments.

(c) If the requester has indicated a willingness to pay some designated amount of fees, but the agency estimates that the total fee shall exceed that amount, GSA shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. GSA shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester submits the new estimated

fee, the time to respond shall resume from where it was at the date of the notification.

(d) GSA's FOIA Public Liaison and other FOIA professionals shall be available to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(e) If the total fees due are over \$250.00, the processing of the request shall stop until the requester pays the fees. Once the materials are ready for response, the GSA FOIA Requester Service Center must receive payment prior to releasing the response to the requester.

(f) Although not required to provide special services, if GSA chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) GSA may charge interest on any unpaid bill starting on the 31st day following the date the requester is first billed. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and shall accrue from the billing date until payment is received by the agency. GSA must follow the provisions of the Debt Collection Act of

1982 (Public Law 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) When GSA reasonably believes that a requester or a group of requesters acting in concert are attempting to divide a single request into a series of requests for the purpose of avoiding fees, GSA may aggregate those requests and charge accordingly. GSA may presume that multiple requests of this type made within a thirty (30) day period have been made in order to avoid fees. For requests separated by a longer period, GSA shall aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

§ 105-60.906 Advanced Payments.

(a) For requests other than those described in this subpart, GSA cannot require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(b) When GSA determines or estimates that a total fee to be charged under this section shall exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. GSA may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(c) Where a requester has previously failed to pay a properly charged FOIA fee to GSA within 30 calendar days of the billing date, GSA may require that the delinquent requester pay the full amount due, plus any applicable interest on that prior request, and require that the requester make an advance payment of the full amount of any anticipated fee before the agency begins to process a new request or continues to process a pending request or any pending appeal. If GSA has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(d) In cases in which GSA requires advance payment, the request shall not be considered received and further work shall not be completed until the required payment is received. If the requester does not pay the advance

payment within 10 business days after the date of the GSA's fee determination, the request shall be closed.

§ 105-60.907 Fee Waivers and Fee Reductions.

(a) Requests for a fee waiver shall be made when the request is first submitted to the agency and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

(b) Requirements for waiver or reduction of fees:

(1) Requesters may seek a waiver of fees by submitting a written rationale as to how disclosure of the requested information is in the public interest because, it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; and

(2) GSA shall furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the

factors described in paragraphs (b) (2) (i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated; and

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met; and

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public

must be considered. GSA shall presume that a representative of the news media shall satisfy this consideration;

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, GSA shall consider the following criteria:

(A) GSA must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, GSA must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (b)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. GSA ordinarily shall presume that when a news media requester has satisfied factors (b)(1) and (2) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data

brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(c) Where only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

Subpart K—Other Rights and Services

§ 105-60.1000 Coda.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart L—Definitions

§ 105-60.1100 Definitions.

Agency records are those created or received in the course of conducting agency business, including, but not limited to: paper, electronic or other physical forms for records. These may include reports, letters, photographs, audio recordings and emails. A record must exist and be in the possession and control of the GSA before it is considered for release.

Commercial use request. A request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include

furthering those interests through litigation. GSA's decision to place a requester in the commercial use category shall be made on a case-by-case basis based on the requester's intended use of the information. GSA shall notify requesters of their placement in this category.

Complex Request. A FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

Confidential commercial information. Commercial or financial information obtained by the GSA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Consultation. When the requested records originate with the agency processing the request, but contain within them information of interest to another agency or other Federal Government office, the agency processing the request should typically consult with that other entity prior to making a release determination.

Coordination. This referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests.

Direct costs are those expenses that GSA incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus sixteen (16) percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space or the heating or lighting of a facility.

Duplication. Reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies here can take the form of paper, audiovisual materials, or electronic records.

Duplication Fees. Reasonable direct costs of making copies of documents. Copies can take various forms, including paper copies, microforms or machine-readable documentation.

Educational institution. Any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution.

Agencies may seek verification from the requester that the request is in furtherance of scholarly research.

Exempt means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the nine statutory FOIA exemptions, found at 5 U.S.C. 552(b) (1) through (9).

Exemption refers to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b) (1) through (9).

FOIA Requester Service Center is the office that oversees FOIA requests for all of GSA.

Interim response is when the agency releases the records on a rolling basis, as the records are located and verified.

Noncommercial scientific institution is an institution that is not operated on a "commercial" basis, as defined in this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial

use. GSA shall advise requesters of their placement in this category.

Perfected FOIA Request. A perfected FOIA request is a FOIA request for records which adequately describes the records sought, is made in accordance with GSA's regulations, which has been received by the GSA FOIA Requester Service center the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment or amount of applicable fees.

Referral. When an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester. This process is called a "referral."

Representative of the news media. Any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news"

to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, GSA can also consider a requester's past publication record in making this determination. GSA shall advise requesters of their placement in this category.

Review. Examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a

confidential commercial information submitter under §7 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Review Fees. Costs which may be charged to commercial-use requesters that consist of direct costs incurred during the initial examination of a document for the purposes of determining whether the records must be disclosed under the FOIA. Review time includes processing the documents for disclosure.

Search. The process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page/or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

Search Fees. Charges for document "search" that include all the time spent looking for responsive material, including page-by-page or line-by-line identification of material within documents. GSA may charge for search time even when it fails to locate records responsive to request or even if the records located are subsequently determined to be exempt from disclosure.

Simple request. A FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.

Submitter means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

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